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Federal Communications Commission

DA 98-659

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DISPATCHED

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Healdton, Oklahoma and Krum, Texas)

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)
)
) MM Docket No. 98-50
) RM-9247
)
)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 1, 1998

Released: April 10, 1998

Comment Date: June 1, 1998

Reply Comment Date: June 16, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Lake Country Communications, Inc. ("petitioner"), requesting the substitution of Channel 229C3 for Channel 229C2 at Healdton, Oklahoma, the reallocation of Channel 229C3 to Krum, Texas, as the community's first local aural service, and the modification of Station KICM's license to specify Krum as its community of license. Petitioner states its intention to apply for Channel 229C3 if allotted to Krum.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870, 4874 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Krum is listed in the 1990 U.S. Census and attributed with a population of 1,542 persons. Further, it states that Krum is located outside of any Urbanized Area. Petitioner notes that Channel 229C2 is the only aural broadcast channel allotted to Healdton. However, it states that the community will not be left without local aural broadcast service because of the concurrently filed petition for rule making by Wright & Wright, Inc., licensee of Station KGOK, Pauls Valley, Oklahoma, to reallocate its Channel 249C3 to Healdton and modify the station's license accordingly. However, even without considering the reallocation of Station KGOK to Healdton, petitioner states that the Healdton and the entire loss area occasioned by the change of community would continue to receive at least five fulltime reception services. It states that only a de minimus area will receive only four nighttime aural services.

3. Based on the information before us, we are unable to determine whether petitioner's

proposal would result in a preferential arrangement of allotments. We agree that the allotment of Channel 229C3 would provide Krum with its first local aural transmission service. However, it would also deprive Healdton, a larger community with a 1990 U.S. Census population of 2,872 people, of its sole local service since Station KICM is the sole aural broadcast station licensed to the community. Petitioner contends that Healdton would not be left without local aural service because of the request to reallocate a channel from Pauls Valley to Healdton. First, we note that the petition filed by Wright & Wright to reallocate Channel 249C3 from Pauls Valley to Healdton has been returned as unacceptable for consideration.¹ The staff found that the channel could not be allotted to Healdton in compliance with the Commission's minimum distance separation requirements since it would be short-spaced to the licensed transmitter site of Station KLAK, Channel 248C2, Durant, Oklahoma. Second, even if the Wright & Wright petition had been accepted for consideration, we could not consider the channel as a Healdton allotment because it is speculative at this time that Channel 249C3 would be deleted from Pauls Valley and reallocated to Healdton.

4. The Commission, while restricting the removal of a community's sole local broadcast service, stated in Change of Community MO&O that we would consider such a request "in the rare circumstances where removal of a local service might serve the public interest." *Id.*, 5 FCC Rcd 7096. However, as the Commission has stated, "[i]n general, we do not believe that the public interest would be served by removing a community's sole local transmission service merely to provide a first local transmission service to another community. See Ardmore, Oklahoma, and Sherman, Texas, 6 FCC Rcd 7006 (1991) and Llano and Marble Falls, Texas, 10 FCC Rcd 4913 (1995). In this case, petitioner only states that the public interest would be served by the reallocation because it would provide Krum with its first local aural service. Therefore, petitioner is requested to provide any additional information as to the overall public interest benefits that would flow from the grant of this proposal, including the transmission services available within the loss and gain areas that would result from the reallocation.

5. Channel 229C3 can be allotted to Krum in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.3 kilometers (13.9 miles) northeast of the community to accommodate petitioner's desired transmitter site.²

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

¹ See Letter from Chief, Allocations Branch, to Robert Lewis Thompson, March 26, 1998.

² The coordinates for Channel 229C3 at Krum are 33-26-34 North Latitude; 97-08-08 West Longitude.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Healdton, Oklahoma	229C2	--
Krum, Texas	--	229C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before June 1, 1998, and reply comments on or before June 16, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert Lewis Thompson
Taylor Thiemann & Aitken, L.C.
908 King Street, Suite 300
Alexandria, VA 22314
(Counsel to petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte

presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.